IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1979 of 2002

Between:

1 M/s. SRI SUSHEELA COTTON CORPORATION, GUNTUR Rep by its Proprietor, Anumakonda Venkata Ramana Rao, Door No.12-6-5 , Ganeswara Rao Street, Kothapet , Guntur - 522 001 (City & Mandalam).
2 Sri Vani Cotton Syndicate, Proprietor, A.Venkateswara Rao, S/o.Suryanarayana Rao, Door No.12-1-26 , Kothapeta, Guntur.
3 Sri Laxmi Cotton Traders, Prop. Nalakurthi Musalaiah, S/o. China Kothaiah, R/o. D.S.Nagar , 15 Line, Etukuru Road, Guntur.
4 Lalitha Cotton Traders, Prop.Gunturu Naga Raju, S/o.Subrahmanyam, R/o.6-4-27 , 4/2 , Arundalpeta , Guntur.
5 Ravi Kiran Cotton Co., Prop: K.V.Mastanaiah, S/o.Koteswara Rao, Relangi Vari Street , D.No.1-7-23 , Nazar Pet, Tenali.
6 Sripathi Cotton Traders, Partner P.R.Ramesh Kumar, S/o.Venkateswarlu, D.No.22-4-25 , Old Bus stand , Lalapet, G.T.Road , Guntur.
7 Anjani Traders, Prop: L.Venkaiah, S/o.Seetharamaiah, Purchuru Post, Prakasam District.
8 V. Adiseshu, S/o Venkateshwarlu, C/o.Ragadapati Venkaiah , Purchuru PO, Prakasam District.
9 S.Nagasrinivasa Rao, S/o.Nageswara Rao, Pusapadu PO , Inkollu, Prakasam District.
10 B.Subba Rao, S/o. Sriramulu, Pusapadu PO, Inkollu, Prakasam District.
11 B.Srinivas Rao, S/o.B.Subba Rao,

Pusapadu PO , Prakasam District.

12 Sri Balaji Cotton Traders, Prop: K.Hari Prasad, S/o.Abaddaiah, Purchuru, Prakasam District.

13 S.Srinivas Rao, S/o.Seetharamaiah, Purchuru, Prakasam District.

14 P.Koteswara Rao, S/o.Venkateswarlu, Purchuru, Prakasam District.

15 T.Hanumanthu Rao, S/o. Lingaiah, Purchuru, Prakasam District.

16 T.V.Bhuvaneswara Rao, S/o.Subba Rao, Purchuru, Prakasam District.

17 Sri Vijaya Trading Co., Prop: A.Suryanarayana Rao, S/o.Venkataiah, 12-6-5B , Ganeswara Vari Street, Guntur.

18 Usman Cotton Traders, Prop: M.Subhani, S/o. Hussain Saheb, Nagarampalem, Police Station Road, Guntur.

19 Usman Ginning Mills, Prop: M.Subhani, S/o. Hussain Saheb, Nagarampalem, Old Police Station Road, Guntur.

20 Sk. Mahabub Subhani, S/o.Hussain Saheb, Pamulapadu PO, Tadikonda Mandal, Guntur District.

21 Sri Kumar Agencies, Prop: Y.V.R.Kumar. S/o.Y.Prasad Guntur.

22 Kamal & Co., Prop: Y.V.R.Kumar. S/o.Y.Prasad, Guntur.

23 K.Venkat Rao, C/o. A.V.Krishna Rao, Kothapeta, Guntur.

24 K.Babu Rao, S/o. K.Peraiah, Daggupadu, Prakasam District.

25 Katta Ravi Kumar, S/o.Peraiah, Daggupadu, Prakasam District.

26 D.Satyannandam, S/o. Joseph, Chirala, Prakasam District.

27 Sujatha Textiles, Prop: Katta Subba Rao, S/o.Peraiah, Daggupadu, Prakasam District.

28 Sujatha Textiles, Prop: Katta Babu Rao, S/o.Peraiah Daggupadu, Prakasam District.

29 Sri Venkateswara Cotton Traders, Prop: P.Subba Reddy, S/o.Venkateswara Reddy, Santoshnagar , Behind Venugopal Swamy Temple, N.G.O.Colony, Guntur.

30 K.Srinivasa Rao, S/o.Guravaiah,
Maddipadu PO, Medarampeta Mandal,
Prakasam District.

31 A.Pothuraju, S/o.Lingaiah,
Via Medarametta, Devalaravuru V&P,
Prakasam District.

32 R.Laxminarayana, S/o.Laxmikanthaiah,
Davalaravuru V& P, Prakasam District.

33 B.L.V.Prasada Rao, S/o.Venkata Laxmi Narayana,
Addanki Village & Mandal, Prakasam District.

34 V.Rama Koteswara Rao, S/o.Nagaiah,
Addanki P & M, Prakasam District.

35 J.Anjaneyulu, S/o.Venkatappaiah,
Vellampalli, Korisapadu Mandal,
Prakasam District.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, Rep by its Secretary,
Revenue Department, Secretariat, Hyderabad.

2 The Chairman, Government of Andhra Pradesh,
Public Enterprises Dept., Implementation, Secretariat,
B-Block, 3rd Floor, A.P.Secretariat, Hyderabad.

3 The Rajahmundry Co-op. Spinning Mills Ltd., Rep by its
Managing Director, Rajahmundry, East Godavari District.

4 The Chirala Co-op. Spinning Mills Ltd., Rep by its
Managing Director, Chirala, Prakasam District.

5 The Chilakaluripet Co-op. Spinning Mills Ltd., Rep by its
Managing Director, Chilakaluripet, Guntur District.

6 The Nellore Co-op. Spinning Mills Ltd., Rep by its
Managing Director, Nellore, Andhra Pradesh.

7 The Parchuru Cotton Growers Co-op. Spinning Mills Ltd.,
Rep by its Managing Director, Inkollu, Prakasam District.

8 The Adilabad Cotton Growers Co-op. Spinning Mills Ltd.,
Rep by its Managing Director, Adilabad, Andhra Pradesh.

9 The Rajarajeswari Co-op. Spinning Mills Ltd., Rep by its
Managing Director, Siriseralla, Karimnagar District.

10 Legal Consultant,
Implementation Secretariat, Public Enterprise Department,
3rd Floor, 310, B-Block, Secretariat Buildings, Hyderabad.

11 The Commercial Tax Officer, No- II Circle, Nellore,

Represented by P. Suresh Kumar,
Commercial Tax Officer-II - Nellore.
(R11 is impleaded as per court Order Dt:15/3/04 in WPMP Nos. 21635\03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

12 State Bank of India Rep: by its Assistant General Manager, Nellore Branch, Achari Street, Nellore – AP.
(R12 is impleaded as per court Order, Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, Nellore, 29610/03, 21634/03, 34034/03, 6569/03.)

13 The Andhra Bank, Rep. by its Chief Manager, Rajahmundry Branch, Rajahmundry.
(R13 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

14 The Commercial Tax Officer, Purchur Circle, Prakasam District, Rep. by Smt. P.S.L. Santha Kumari, Commercial Tax Officer, Purchur.

(R14 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

15 V. Narsimha Rao, S/o Sheshagiri Rao, R/o Krishna Nagar, Guntur, Guntur District.
(R15 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, Guntur District. 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

16 T. Suri, S/o Yellaiah, R/o Nandyala, Kurnool District.
(R16 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

17 Ch. Israilu, S/o Bushanam, R/o Daggupadu, Karamchedu Mandal, Prakasam District.
(R17 is impleaded as per Court-Order, Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

18 K.Samson, S/o Peraiah, R/o Daggupadu, Karamchedu Mandal, Prakasam District.
(R18 is impleaded as per Court-Order, Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03,

34034/03, and 6569/03).

19 G. Babu Rao, S/o Raja Rao,
R/o Daggupadu, Karamchedu Mandal, Prakasam District.
(R19 is impleaded as per Court-Order, Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

20 R. Yakobu, S/o Venkateshwarlu,
R/o Daggupadu, Karamchedue Mandal, Prakasam District.
(R20 is impleaded as per Court-Order, Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03).

21 M.Suri Babu, S/o Venkata Krishnaiah,
R/o P.V Palem, Karamchedue Mandal, Prakasam District.
(R21 is impleaded as per Court-Order, Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

22 D.Luthar Sastri, S/o Satyanandam,
R/o Parchuru Village, Prakasam District.
(R22 is impleaded as per Court-Order Dt:15/3/04, in WPMP Nos. 21635/03,14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

23 K. .Jakraiah, S/o Chinnabai,
R/o Inkollu, Prakasam District.

(R23 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

24 K. Jayababu, S/o K. Samson,
R/o Inkollu, Prakasham District.
(R24 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

25 Vaddi Babu, S/o Tirupathaiah,
R/o P.V Palem, Karamchedue Mandal, Prakasam District.
(R25 is impleaded as per Court-Order, Dt: 15/3/04 in WPMP Nos. 21635/03,14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

26 K. Yehonu, S/o. Bikshalu,
Karamchedu Mandal, Prakasam District.
(R26 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03,

29610/03, 21634/03, 34034/03, and 6569/03.)

27 G.Raja Rao, S/o Pethuru,
R/o Inkollu, Prakasam District.
(R27 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

28 G. Marku, S/o. Asirwadam,
R/o Paruchuru, Prakasam District.
(R28 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 4034/03, and 6569/03.)

29 SK. Mustaf, S/o Mastan,
R/o Daggupadu, Karamchedue Mandal, Prakasam District.
(R29 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

30 Banu Reddy, S/o Ella Reddy,
Guntur, Guntur District.
(R30 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

31 G.Gopi, S/o Tirupati,
R/o Sirisirla, Karimnagar District.
(R31 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

32 J.Anjaneyulu, S/o Punna Rao,
Medaramitla, Prakasam District.
(R32 is impleaded as per Court-Order Dt:15/3/04 in WPMP 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

33 IFCI Limited, Rep: Asst G.M (Law) V.Satya Venkata Rao, S/o Sri V.V. Ramakrishna Rao, R/o Hyderabad.
Taramandal Complex, 8th Floor, 5-9-13 Saifabad,
Hyderabad 500 004.
(R33 is impleaded as per Court-Order, Dt:15/3/04 in WPMP Nos. 21635/04, 14346/03, 29610/03, 21634/03, 34034/03)

34 Industrial Development Bank of India, Rep: Deputy General Manager, A.V.Sunil S/o Shri K.Karunakaran, R/o Hyd. IDBI Tower, 5-9-89/1&2 Chapel Road, Hyderabad.
(R34 is impleaded as per Court-Order Dt:15/3/04 in WPMP Nos. 21635/03, 14346/03, 29610/03, 21634/03, 34034/03, and 6569/03.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more especially one in the nature of Writ of Mandamus, declaring the action of the 2nd & 10th respondents in not disbursing the amounts which were due to the petitioners that is being deposited in Scheduled Bank as arbitrary , illegal , unjust, besides being Contrary to the Judgment in Writ Petition No.19867/2000 , Dt: 8-5-2001 and consequently direct the respondents to disburse the amounts which were deposited in Scheduled bank as per their entitlement with interest.

For the Petitioners: Mr. S. Ramachandra Rao, Senior Counsel for MR.K.R.PRABHAKAR, Advocate.

For Respondent Nos.1 and 2: The Advocate General

For Respondent Nos.3 to 9: Mr. V.T.M. Prasad, Standing Counsel.

For Respondent No.10:

For Respondent Nos.11 and 14: Special Government Pleader for Taxes

For Respondent No.12: Mr. M. Narender Reddy, Advocate.

For Respondent No.13: Mr. Nuty Rammohan Rao, Advocate.

For Respondent Nos.15 to 32: Mr. G.V. Shivaji

For Respondent Nos.33 and 34: Mr. S. Niranjan Reddy, Advocate.

The Court made the following :

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THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE C.V. RAMULU

WRIT PETITION NO. 1979 OF 2002

JUDGMENT: (per Sri B. Sudershan Reddy, J)

The petitioners in this writ petition invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and accordingly pray for issuance of a writ of Mandamus declaring the action of the respondents in not disbursing the amounts which were due and payable to them and not extending the benefit of G.O. Rt. No. 412, Industries and Commerce (Tax) Department, dated 14-07-2003 as illegal. The petitioners also pray to declare Section 12-A (9) of the Andhra Pradesh Cooperative Societies Act, 1964 as amended by Act 16 of 2003 as unconstitutional. They accordingly pray for issuance of a consequential direction to the respondents to disburse the amounts which were deposited in the scheduled bank pursuant to the directions of this Court issued in W.P No. 19867 of 2000
dated 08-05-2001.

FACTUAL MATRIX:

In order to consider as to whether the petitioners are entitled for grant of any relief, a few relevant facts leading to filing of this writ petition may have to be noticed:

This writ petition has been initially filed by the cotton growers and traders. However as at present, the cotton growers do not claim any relief and only the trader – writ petitioners press this writ petition for further hearing. These very writ petitioners earlier filed W.P No. 19867 of 2000 challenging the notification
dated 24-08-2000 as modified on 30-09-2000 issued by the 1st respondent mainly on the ground of it being violative of Sections 3, 4 and 4(b) of the Andhra Pradesh Relief Undertakings (Special Provisions) Act, 1971. By the said notification, the Government has

called for applications inviting tenders for the purchase of the Rajahmundry Cooperative Spinning Mills at Rajahmundry, the Nellore Cooperative Spinning Mills at Nellore and the Adilabad Co-operative Spinning Mills at Adilabad. Their case in the said writ petition was that the cotton growers and traders were suffering on account of the wrong policies and actions of the Government that ultimately resulted in the cooperative spinning mills becoming sick on account of which the amounts due towards price of cotton supplied by the traders as well as the growers could not be paid by the cooperative spinning mills. The assets of the cooperative spinning mills cannot be allowed to be sold, as such sale was likely to effect the rights of the petitioners to recover the amounts due to them.

The State opposed the writ petition *inter alia* contending that the cooperative spinning mills have been set up with the contribution of the share capital of the State Government and that it sanctioned various types of loans to the spinning mills from 1984-85 onwards for modernisation, renovation and rationalization of manpower and that it had also issued guarantees on behalf of the said societies in favour of various financial institutions for the principal amounts borrowed by the spinning mills running into crores of rupees. Apart from the above, the Government had also sanctioned loan amount to the societies to meet expenditure for payment to the employees under the voluntary retirement scheme. The Government having realized that there was no possibility to rehabilitate the cooperative spinning mills, initiated action under Section 12-A of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'). Section 12-A of the Act contains special provisions in respect of spinning mills and sugar factories.

The background and circumstances under which Section 12-A of the Act has been inserted in the Act is evident from the Statement of Objects and Reasons appended to the Bill:

> "The Sugar Mills and Spinning Mills were set up in the Co-operative Sector with the idea of involving the farmers in organizing, financing and managing these Mills. The role of the Government was to help them with share capital, margin money, the required administrative guidance and managerial support. For a variety of reasons, some of these Co-operative Institutions have become non-viable and call for massive investing, not only for their revival but also for recurring overheads including salaries and wages. It was never the intention that Government should fund these organizations in case they become non-viable. On account of financial constraints faced by the State, Government is not in a position to fund the resources to meet these commitments. The managements have to, therefore, look for alternative avenues for improving the functioning and reviving of these Units so that the interests of the farmers and workers of these mills can be safeguarded.
>
> The existing provisions of the Andhra Pradesh Co-operative Societies Act, 1964 do not permit the transfer of the assets of a Co-operative Institution to any non-co-operative institution. The Government have, therefore, decided to provide for the transfer of the assets and liabilities of such sick units to non-co-operative institutions by suitably amending the Andhra Pradesh Cooperative Societies Act, 1964".

Be it as it may, the State Government further contended that the petitioners, being unsecured creditors cannot have preference over the secured creditors and only after meeting the debts of the secured creditors can the petitioners' claim be considered having regard to the financial situation.

However, it was not and is not in dispute that the cooperative spinning mills which ultimately became sick owed certain amounts to the petitioners towards the purchase price of the cotton and other amounts. It is also not in dispute that there was a centralized cotton purchase scheme which required the individual growers/purchasers to register themselves by making deposit of Rs. 15,000/- and upon such registration, the growers/purchasers were allotted various cooperative spinning mills to whom they were required to sell the cotton. It was not open for the traders/growers to sell cotton to the spinning mills of their own choice.

This Court after an elaborate consideration of the matter held that insofar as the challenge to the constitutional vires of Section 12-A of the Act is concerned, "it is not demonstrated as to how the said legal provision is unconstitutional". The Court found that the provision was made to meet the situation where the cooperative spinning mills were not able to function viably and the authority named under Section 12-A was authorized to transfer its assets or its assets and liabilities in whole or part to any other society or company or a firm or a body whether incorporated or not on such terms and conditions as may be formulated in the prescribed manner, but only after satisfying itself that the cooperative spinning mills have become sick and there was no possibility to rehabilitate the same. The Court ultimately upheld the constitutional validity of Section 12-A of the Act.

This Court in ***M. Krishnama Naidu and others v. State of A.P***[1], having critically examined the constitutional validity of Section 12-A of the Act at the instance of some of the share holders in the cooperative sugar factories in some detail, also came to similar

conclusion and accordingly rejected the contentions based on Articles 31-A and 300-A as well as the attack based on Article 19(1) (c) of the Constitution of India. The Court held that the legislation squarely falls within Entry 32 of List II of the Constitution, which provides for incorporation, regulation and winding up of companies other than those specified in List I including the cooperative societies. The challenge based on Article 14 of the Constitution of India was also rejected.

This Court, however, while disposing of W.P No. 19867 of 2000 observed:

> "State is the buyer of the cotton from the petitioners and the same is governed by the Sale of Goods Act. The seller is entitled for the price immediately, and if not paid, he is also entitled for the damages apart from the sale price. In fact, the seller got a lien over the properties sold, so long as the unpaid purchase money is not realized. The seller is also entitled to seize the goods in transit for the unpaid price and re-sell the same. It cannot be said that the petitioners have got no right to realize the amounts or that their rights are subservient to the rights of the secured creditors like the financial institutions/banks. The secured properties may be land, machinery and plants thereof, but that does not bar the claim for the unpaid purchase amounts. Secured debt may be backed by collateral like mortgage etc. and unsecured debt is not backed by any pledged collateral or security agreement. But, what is the impact of the statutory lien provided by Sale of Goods Act is also a question for consideration. In this scenario, it cannot be said that the petitioners are not entitled for any notice before the finalisation of the tender. The tender is yet to be evaluated and accepted, and before that, the petitioners are entitled to participate and debate with regard to their rights for the unpaid price of cotton,

which they have undisputably delivered to the above three spinning factories".

The Court accordingly upheld the constitutional validity of Section 12-A of the Act and also upheld the action of the authorities in deciding to sell the spinning mills of Rajahmundry, Nellore and Adilabad. In the operative portion of the judgment, it is held:

"In view of the above:

(1) We uphold the constitutional validity of Section 12-A of the A.P Co-operative Societies Act inserted by A.P Act 22 of 1996.

(2) We also uphold the action of the Authorities in deciding to sell the spinning mills units of Rajahmundry, Nellore and Adilabad;

(3) The tenders, which have been submitted, shall be evaluated and further process regarding finalisation of the same may be made;

(4) The petitioners shall be entitled for a notice and to debate about their rights for payment of unpaid purchase money and also the priorities and until such hearing and decision thereof, the price fetched in the auction shall not be disbursed to anybody and shall be kept in a fixed deposit for a period of six months in the State Bank of Hyderabad either at the Main Office or at Branch Office/s in the State of Andhra Pradesh; and

(5) The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order".

That after the disposal of the writ petition, the implementation Secretariat has completed the bid process and collected the full purchase price for the assets of the spinning mills at Adilabad, Rajahmundry and Nellore. All the amounts collected from the bidders in respect of the assets of the said mills have been deposited with the State Bank of Hyderabad, Secretariat Branch, as directed by this Court in the judgment dated 08-05-2001.

That as directed by this Court, notices were given to the petitioners and also to other suppliers of cotton for a hearing on 15-09-2001 calling upon them to submit their claims regarding unpaid purchase money and proof of their respective claims against the said spinning mills. The petitioners accordingly submitted their claims on 15-09-2001. That while the matter was under consideration, the present writ petition has been filed inter alia contending that the respondents without any justification whatsoever withheld the payment of unpaid purchase money even after realizing certain amounts by sale of assets of the cooperative spinning mills. It is stated in the affidavit filed in support of the writ petition that the respondents have already decided the quantum of amounts payable to the petitioners but without any reason and in an arbitrary manner withheld the payments. It is specifically stated that the respondents have deposited the amounts to a tune of Rs.4.36 Crores in a scheduled bank but failed to take steps to disburse the same to the petitioners.

In the counter affidavit, it is explained that attempts were made to disburse the amounts deposited with the State Bank of Hyderabad to various creditors of the said mills in order of priority after 15-03-2002 i.e. to say after the total purchase price is realized in respect of the assets of the Nellore spilling mills also. It is admitted that all the amounts collected from the bidders in respect of the said mills amounting to an aggregate of Rs.16,93,96,000/- have been deposited with the State Bank of Hyderabad. In the meanwhile, the Regional Provident Fund Commissioner attached the sale consideration which is lying in deposit claiming a sum of Rs.5,43,88,492/- towards employees provident fund dues. The case of the respondents is that the petitioners being unsecured creditors are not entitled to have their

claims satisfied out of the amounts realized from the sale of said assets before payment of dues of secured creditors, provident fund authorities and other preferential creditors. The summum bonum of the contention of the State is that the petitioners being unsecured creditors cannot have a march over the secured creditors.

SUBSEQUENT EVENTS:

That during the pendency of the writ petition, the Government vide G.O Rt. No. 412, Industries and Commerce (Tax) Department, dated 14-07-2003 issued orders sanctioning an amount of Rupees One Crore Ninety Three Lakhs Ninety Nine Thousand as interest free loan to A.P State Federation of Cooperative Spinning Mills Limited for payment of "cotton dues to the farmers by Co-operative Spinning Mills. i . e . , Chirala, Inkollu, Sattenpally, Karminagar, Gunthakal, Rajahmundry and Nellore on pro-rata basis as per the annexure and the balance amount if any will be settled later". The amount sanctioned is secured against the assets of the mills and managing directors of the spinning mills were directed to create charge of assets for this loan amount and shall be repayable by the mills concerned from the sale proceeds of the assets. Obviously, it was a temporary measure initiated by the Government to save the starving cotton growers. That G.O is challenged by some of the petitioners who are traders. It is difficult to appreciate as to how some of the petitioners in the same writ petition can challenge the said G.O which is in their favour, notwithstanding the fact that the petitioners who are growers did not join the challenge.

That while the matter stood thus, Section 12-A of the Act which deals with the special provisions in respect of certain societies is further amended by Act 16 of 2003. In the objects and reasons for

further amending Section 12-A of the Act, it is *inter alia* stated that the amendment has been made so as to make Section 12-A in conformity with the orders of this Court in *M. Krishnama Naidu's* case (1 supra). The whole of Section 12-A is substituted by Act 16 of 2003 which reads as follows:

> "Section 12-A. *Special provisions in respect of certain societies*:- (1) Notwithstanding anything contained in this Act or the rules made thereunder or by the bye-laws of the societies concerned or in any other law for the time being in force, where, in the opinion of the Registrar, a society, --
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> (a) in which majority of the shares are held, or
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> (b) to which loan exceeding fifty percent of the total loan borrowed is advanced, or
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> (c) in which liabilities by way of guarantee for borrowing including working capital borrowing exceeding fifty per cent of the total borrowings are undertaken, by the Government or one or more Government Companies or one or more corporations owned or controlled by the Government, or a society in which majority of shares are held by one or more of the aforesaid persons or any combination thereof, --
>
> (i) has become a sick co-operative society and there is no possibility to rehabilitate it; or
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> (ii) being in processing, manufacturing or other industrial sector, has its unit or units lying incomplete or idle or underutilized for want of funds or for any other reason, or ceased to undertake its operations, or cannot undertake its operations in a viable manner; or
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> (iii) being in marketing, trading, commercial or any other sector has ceased to undertake its operations, or cannot undertake its operations in a viable manner; and it is necessary in public interest to transfer its assets or assets and liabilities, in whole in part, to any other person, he may make an order to that effect.
>
> 2(i) The Registrar shall, before forming the opinion

and making the order under sub-section (1), give an opportunity to the society by calling upon it by notice in writing in such manner as may be prescribed to state its objections or make its representations, if any, and consider the objections or representations, if any, so stated or made.

(ii) It shall be the responsibility of the society to place the notice received from the Registrar before the general body convened for the purpose and communicate its objections or representations, if any, to the Registrar within a period of four weeks from the date of receipt of the notice from him:

Provided that the Registrar may receive the objections or representations, if any, from the society after the said period of four weeks but not later than five weeks from the date aforesaid, if he is satisfied that the society was prevented by sufficient cause from stating its objections or making its representations, if any, in time.

(3) Where the Registrar has made an order under sub-section (1), he may appoint the Implementation Secretariat or any other committee, consultant or adviser having the requisite expertise or experience to assist and advise him for the purpose of, --

(i) assessing the value of the assets or the assets and liabilities, in whole or in part, of the society;

(ii) formulating terms and conditions for transfer of assets or assets and liabilities, in whole or in part, of the society;

(iii) calling for tenders or offers for the assets or assets and liabilities, in whole or in part, to obtain the best possible offer;

(iv) evaluating the offers received and identifying the best offer;

(v) finalising sale agreement and other documents relating to the transfer;

(vi) receiving the proceeds from the sale;

(vii) applying the proceeds towards

discharge of the liabilities of the society as per the priorities set out in sub-section (9);

(viii) providing such other service or assistance as the Registrar may think it necessary; and

(ix) advising and assisting generally on matters relaing to employees, creditors and other matters connected with the sale.

(4) Where the best offer for the assets or assets and liabilities, in whole or in part, of the society concerned is identified in the manner prescribed, the Registrar shall, before approving the best offer and the terms and conditions of transfer thereof, consult the Government and the financing bank, if any, to which such society is indebted.

(5) Where the best offer is approved, the Registrar may make an order directing that the Committee of the society concerned shall stand dissolved from the date specified in the order and that the assets or assets and liabilities, in whole or in part, of the society shall be transferred to the person submitting the best offer on fulfilment of such terms and conditions including payment of the purchase price as may be specified in the order in the manner prescribed.

(6) (i) The Registrar shall, before making the order under sub-section (5), give an opportunity to the society by calling upon it by notice in writing in such manner as may be prescribed to state its objections or make its representations, if any, and consider the objections or representations, if any, so stated or made.

(ii) It shall be the responsibility of the society to place the notice received from the Registrar before the general body convened for the purpose and communicate its objections or representations, if any, to the Registrar within a period of four weeks from the date of receipt of the notice from him:

Provided that the Registrar may receive the objections or representations, if any, from the society after the

said period of four weeks but not later than five weeks from the date aforesaid, if he is satisfied that the society was prevented by sufficient cause from stating its objections or making its representations, if any, in time.

(7) On the Registrar making an order under sub-section (5) and on such order being notified in the Andhra Pradesh Gazette, the Committee of the society shall stand dissolved and all members of the Committee including the President and the Vice-President if any, shall vacate their respective office from the date specified in the order. The Registrar shall simultaneously appoint a person or persons, wherever necessary, to manage the affairs of such society till it is dissolved.

(8) The person or persons appointed by the Registrar under sub-section (7) shall transfer the assets or assets and liabilities, in whole or in part, of the society concerned to the person submitting the best offer in the manner specified in the order.

(9) The proceeds realized from the transfer of assets or assets and liabilities, in whole or in part, of the society concerned, shall be applied in discharge of the liabilities of such society in the following order of priority, namely:-

(i) all expenses incurred for preservation and protection of the assets;

(ii) (a) dues payable to workmen and employees;

(b) debts payable to secured creditors according to their rights and priorities *inter se*;

(c) dues payable to provident fund or other authorities which are protected under a statue by a charge on the assets;

(iii) debts payable to ordinary creditors.

(iv) Share capital contributed by the members of the society:

Provided that the cases covered under Category (i) shall have precedence over all other categories, Category (ii) shall have precedence over Categories (iii) and (iv) and Category (iii) shall have precedence over Category (iv);

Provided further that the debts specified in each of the categories shall rank equally and be paid in full, but in the event of the amount being insufficient to meet such debts, they shall abate in equal proportions and be paid accordingly;

Provided also that the question of discharging any liability with regard to a debt specified in a lower category shall arise only if a surplus fund is left after meeting all the liabilities specified in the immediately higher category.

(10) When the assets and liabilities of the society concerned are transferred, or when the assets of the society are transferred and the realisations therefrom applied towards discharge of its liabilities, on the making of an order by the Registrar, the registration of such society shall stand cancelled and the society shall stand dissolved from the date specified in the order.

(11) Notwithstanding anything contained in other provisions of this Act or any other law, or any contract or any other instrument for the time being in force, the provisions of the order or orders of the Registrar under this section shall be binding on the society concerned and its members.

(12) No suit or other legal proceeding shall be instituted or maintained or continued in any Civil Court, Tribunal or other authority in respect of any order made under this section.

(13) It shall be competent for the Government to make rules and to give such directions as they deem fit to the Registrar to carry out the provisions of this Section.

Explanation:- For the purpose of this section, --

(a) "sick co-operative society" means a co-operative society which has, --

(i) the accumulated losses in any financial year equal to fifty per cent or more of its average net worth during four years immediately preceding such financial year; or

(ii) fail to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such society;

(b) "net worth" means the sum total of the paid up capital and free reserves after deducting the provisions or expenses as may be prescribed.

(c) "free reserves" means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation;

(d) "debt" means any liability (inclusive of interest), which is due and payable by a society, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise and legally recoverable from such society;

(e) the expression "cannot undertake its operations in a viable manner" shall mean the level of operations of the society in any financial year during four financial years immediately preceding the financial year in which the issue is being considered, is such that the income generated therefrom is not adequate to meet even the operating and establishment costs, current liabilities and to service the loans and working capital borrowings availed by it.

(f) "person" includes an individual, partnership, trust, company, corporation, co-operative society, an association of persons or a body of individuals, whether incorporated or not, and every artificial juridical persons, not falling within any of the preceding categories;

(g) "Implementation

Secretariat" means the implementation Secretariat established in the Department of Public Enterprises by the State Government in G.O. Ms.No. 150, General Administration (PE-II) Department, dated 30th April, 1998.

(h) "best offer" means the offer received that best satisfies the criteria specified in the call for tenders or offers".

The petitioners have filed an application, which has been ordered, seeking amendment of the prayer in the writ petition to include challenge to the newly amended Section 12-A (9) of the Act. The newly incorporated sub-section (9) of Section 12-A deals with the proceeds realized from the transfer of assets of the society concerned and its application in discharge of the liabilities of the society. The order of priorities as to how the sale proceeds are to be applied in discharge of liabilities is also provided for. That according to the said prioritization, the claim of the petitioners falls under 'debts payable to ordinary creditors', which is at No. III in the order of priority. The particulars furnished by the State during the course of hearing of this writ petition suggest that the proceeds realized from the transfer of assets are not sufficient to meet all the liabilities and that the petitioners are not likely to get any amounts. It is under those circumstances, constitutional validity of sub-section (9) of Section 12-A of the Act is challenged on various grounds.

Be it noted, this Court in ***G.V. Jayachandra Chowdary v. Government of A.P***[2] upheld the constitutional validity of Section 12-A which includes sub-section (9) of Section 12-A of the Act. However, Sri S. Ramachandra Rao, learned senior counsel appearing on behalf of the petitioners contended that sub-section (9) of Section 12-A was not challenged but only sub-sections (3) to (8) were alone challenged

and struck down by this Court as unconstitutional being violative of Article 14 of the Constitution of India.

That a fair reading of the judgment in no manner supports the contention urged by the learned senior counsel. The operative portion of the judgment in G.V. Jayachandra Chowdary's case reads as follows:

> "In the result, we;
>
> (a) uphold the constitutional validity of Section 12-A(1), (2) and (9) to (13) and explanations, except explanation (h), which defines the 'best offer';
>
> (b) strike down explanation (h), which defines 'best offer', as unconstitutional being violative of Article 14 of the Constitution of India;
>
> (c) do not find any constitutional infirmity in sub-sections (3) to (8) of Section 12-A of the Act, but the concept of 'best offer' as defined in explanation (h) runs through the said provisions and or so inextricably bound up those forming an integral part of the said sub-sections and, therefore, we find it difficult to apply the 'doctrine of severability' and save them. Therefore, sub-sections (3) to (8) are also struck down as unconstitutional being violative of Article 14 of the Constitution of India;
>
> (d) uphold the decision of the Registrar taken under Section 12-A(1) of the Act alone; and
>
> (e) other consequential decisions are declared void in view of striking down of explanation 'h' and as well as sub-sections (3) to (8) of Section 12-A of the Act".

However, we shall examine the submission made by the learned senior counsel as to whether sub-section (9) of Section 12-A of the Act is repugnant to Section 47 of the Sale of Goods Act, 1930? It was contended that the petitioners continue to have lien over the

cotton which was sold on credit basis till the price payable thereof is realized. The impugned provision prescribes the priorities in payment of debts, which virtually denied the petitioners' right to recover the sale price of the cotton. The submission was, the impugned provision is repugnant to Section 47 of the Sale of Goods Act, 1930.

The submission is misconceived. The Sale of Goods Act, 1930 has undoubtedly been enacted in exercise of the powers conferred upon the Parliament and traceable to Entry 33 of List III of the Constitution of India. This Court in G.V. Jayachandra Chowdary's case (2 supra) and as well as in M. Krishnama Naidus case (1 supra) held that the impugned legislation squarely falls within Entry 32 of List II, which provides for incorporation, regulation and winding up of the companies including cooperative societies other than those specified in List I. It is fairly well settled and needs no restatement in our hands that the test of repugnancy is relevant and applicable only where the legislation is a matter in the concurrent list. Where the subject matter of the legislation falls either within the union list or the state list, the question is to be decided with reference to the legislative competence. The test of repugnancy would not be applicable in such a situation.

It is settled law that when a law is impugned on the ground that it is ultra vires the powers of the Legislature which enacted it, what has to be ascertained is the true character of the legislation. One must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. "To resolve the controversy if it becomes necessary to ascertain to which entry in the three lists, the legislation is referable, the Court has evolved the doctrine of pith and substance. If in pith and substance, the legislation falls within one entry or the other but some portion of the subject-matter of the

legislation incidentally trenches upon and might enter a field under another list, then it must held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence" (***see D.C. & G.M. Co. Ltd. V. Union of India***[3]).

In ***TIKA RAMJI v. STATE OF U.P***[4], the Supreme Court observed that " Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because, if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise".

It is not necessary to burden this judgment with various pronouncements of the Supreme Court on the subject since the law is so well settled that the question of repugnancy arises only when both the legislatures are competent to legislate in the same field i.e., to say when both the union and the state laws relate to a subject specified in List – III and occupy the same field.

Once it is to be held that the impugned legislation is traceable to Entry 32 of List II, the question of repugnancy and conflict with the provisions of the Sale of Goods Act, 1930 does not arise.

In ***State of A.P v. Mcdowell and Co.,***[5] Jeevan Reddy, J speaking for the Bench observed:

> "If a particular matter is within the exclusive competence of the State Legislature, i.e., in List II that represents the prohibited field for the Union. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the States. The concept of occupied field is really relevant in the case of laws made with reference to Entries in List III.

> In other words, whenever a piece of legislation is said to be beyond the legislative competence of a State Legislature, what one must do is to find out, by applying the rule of pith and substance, whether that legislation falls within any of the Entries in List II. If it does, no further question arises the attack upon the ground of legislative competence shall fail. It cannot be that even in such a case, Art. 246(3) can be employed to invalidate the legislation on the ground of legislative incompetence of State Legislature. If, on the other hand, the State legislation in question is relatable to an Entry in List III applying the rule of pith and substance, then also the legislation would be valid, subject to a Parliamentary enactment inconsistent with it, a situation dealt with by Art.254. Any incidental trenching does not amount to encroaching upon the field reserved for Parliament……"
>
> (Emphasis supplied).

The impugned sub-section (9) of Section 12-A of the Act is in no manner in conflict with the central enactment of the Sale of Goods Act, 1930. None of the rights conferred upon the sellers under the provisions of the Act are sought to be taken away or adversely affected or intruded into by the impugned legislation. The impugned legislation deals with the distribution of the proceeds realized from the transfer of assets and liabilities of the Society concerned and the manner of application in discharge of the liabilities of such society. The impugned legislation essentially deals with the transfer of assets and liabilities of sick cooperative societies and the manner of transfer of assets of such societies concerned and distribution of proceeds realized from such transfer of assets. The provision in no manner intrudes into any of the provisions of the Sale of Goods Act, 1930 and on reading the scheme of the Sale of Goods Act, 1930 referable to Entry 33 of List III, it is clear that it is essentially a law relating to the

sale of goods and whereas the impugned legislation referable to Entry 32 of List II dealing with the sick cooperative societies and sale of their assets and liabilities and distribution of the sale proceeds in a particular manner. Hence, these two acts operate in different fields. The argument of occupied field is totally out of place. The impugned legislation in no manner affects any of the remedies that may be available to sellers of goods under the provisions of the Sale of Goods Act, 1930.

Whether Section 12-A of the Act is liable to be declared as unconstitutional on the ground that it has not been reserved for the consideration of the President and has not received his assent?

Yet another facet of submission was that the unamended Section 12-A of the Act has been reserved for the consideration of the President and has received his assent but the newly substituted Section 12-A has not been reserved for the consideration of the President and has not received his assent and, therefore, the impugned legislation is liable to be declared unconstitutional. Reliance has been placed on the decision reported in ***Pt. Rishikesh and Another vs. Salma Begum (Smt)***[6]. In the said decision, the Supreme Court while making an analysis of Clause (2) of Article 254 held that it is an exception to clause (1) of Article 254. That "if any law made by the State Legislature is reserved for consideration and receives assent of the President, though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central law and operates in that State as valid law. If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier

amendment made by the State Legislature, if found inconsistent with the Central amended law, both Central law and the State law cannot coexist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law become void under Article 254(1) unless the State Legislature makes law reserved for the consideration of the President and received the assent of the President".

We fail to appreciate as to how the said judgment is applicable and supports the contention urged by the learned senior counsel. Mere fact that the unamended Section 12-A has been reserved for the consideration of the President and has received his assent itself is no ground to presume that it was repugnant to the provisions of the earlier law made by the Parliament with respect to one of the matters enumerated in the concurrent list.

Learned Advocate General relying upon the decision of this Court in ***A . Hampayya vs. The Secretary, Agricultural Market Committee (Gooti)***[7] submitted that merely because the parent act or one of the amended provisions has been reserved for the consideration of the President and received his assent, it is not mandatory and necessary that all amendments should be reserved for the assent of the President even if the amendments do not touch upon any subjects relating to any entry in the concurrent list. This Court after referring to various decisions observed:

> "In the case on hand in the parent Act there are certain provisions which impinge upon the subjects falling under the Concurrent List. Hence, the State Legislature thought it necessary and appropriate to obtain the assent of the President to save the Act from a possible challenge in the courts. By that it does not follow that all amendments should be reserved for the

assent of the President, though the amendments do not touch upon any subjects relating to any entry in the Concurrent List".

In our considered opinion, it is not that every amendment should be reserved for the assent of the President irrespective of the fact whether the amendment involves anything which calls for the assent of the President merely because the main Act has been reserved for the consideration of the President and received his assent. The assent of the President cures the inconsistency between the Central Act and the law made by the legislature with respect to one of the matters enumerated in the concurrent list. Therefore, the test is whether the law made by the Legislature of the State is with respect to one of the matters enumerated in the concurrent list and whether it contains any provision repugnant to the provisions of an earlier law made by the Parliament or existing law with respect to that matter. Only in such a situation, the law made by the Legislature is required to be reserved for the consideration of the President and it shall prevail in that State if the same received the assent of the President. Since the impugned provision is not a law made by the Legislature with respect to one of the matters enumerated in the concurrent list and repugnant to the provisions of any earlier law made by the Parliament, the presidential assent is not required to be obtained.

In ***P.N. KRISHNA LAL v. GOVT. OF KERALA***[8], the Supreme Court while considering the constitutional validity of Sections 57-A and 57-B inserted by the Abkari (Amendment) Act, 1984 into Abkari Act (1 of 1077) having examined the scheme of the Act and the Amendment Act found that in its pith and substance, it is an integral scheme of the Act, which falls within Entry 8 read with Entries 64 and 65 of List II of Schedule VII to the Constitution. Under Article 246(3) the State

Legislature was competent to enact the Amendment Act. Therefore, the assent of the President is not necessary. "Even assuming that some of the provisions incidentally trespass into the field of operation of the Central provisions falling in the Concurrent List, which empower both Parliament and the State legislatures to enact the law, the assent given by the President made Sections 57-A and 57-B valid……..it is not the requirement of law under Article 254 that the State Government should seek assent of the President in respect of each and every specified provisions of the Central Act or Acts in respect of which there would be inconsistency or repugnancy in the operation of the Central provisions and the State enactment……It is enough that once the assent of the President is sought and given to the State amendment, though to some extent inconsistency or repugnancy exists between any provision, part or parts of any Act or Acts of any Central statutes, the repugnancy or inconsistency ceases to operate in relation to the State in which the assented State enactment operates" (Emphasis supplied).

It is held that the assent sought for and given by the President in general terms would be effective for all purposes unless specific assent is sought in which event it would be operative only to that limited extent.

Viewed from any angle, we find no merit in the challenge based on the requirement of presidential assent.

Whether the impugned provision violates the judgment of this Court in W.P No. 19678 of 2000?

Learned senior counsel further contended that the impugned legislation is bad as the same has been brought into existence with a view to overrule the decision of this Court in W.P No. 19867 of 2000 dated 08-05-2001. The contention was that the act amounts to usurpation of judicial power by the State Legislature. It is out and out a legislation to nullify the judgment. Learned Advocate General, per contra, submitted that the impugned legislation in no manner takes away any of the reliefs granted by this Court and it in no manner nullifies the judgment.

Before we propose to examine the submission in detail, it would be just and necessary to notice the decision of this Court and the relief granted thereunder, which is to the following effect.

This Court while considering the validity of the notification issued calling for applications inviting tenders for the sale of assets of the cooperative spinning mills while upholding the action of the authorities in deciding to sell the assets of the spinning mills declared that the petitioners shall be entitled for a notice and "to debate about their rights for payment of unpaid purchase money and also the priorities and until such hearing and decision thereof, the price fetched in the auction shall not be disbursed to anybody and shall be kept in a fixed deposit……..". The exercise was directed to be completed within a period of three months.

The question that falls for consideration is whether the impugned legislation has been brought into existence to nullify the judgment of this Court?

I n ***P.C. MILLS LTD. V. BROACH BOROUGH MUNI***[9], the Supreme Court while considering the validity of Section 73 of the Bombay Municipal Boroughs Act, 1925 which is in the nature of

validating statute, observed that "when a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively……it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances".

In ***S.R. Bhagwat v. State of Mysore***[10], the Supreme Court observed that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.

In the recent decision in ***Virender Singh Hooda v. State of Haryana***[11], the Supreme Court after an elaborate consideration and on analysis of its earlier decisions observed:

> "It cannot be said that the effect of the writs issued by the Courts cannot be nullified by legislature by enacting a law with retrospective effect. The question, in fact, is not of nullifying the effect of writs which may be issued by the High Court or Supreme Court. The question is of removing the basis which resulted in issue of such a writ. If the basis is nullified by enactment of a valid legislation which has the effect of depriving a person of the benefit accrued under a

> writ, the denial of such benefit is incidental to the power to enact a legislation with retrospective effect. Such an exercise of power cannot be held to be usurpation of judicial power".

It is further held that there is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. The Legislature can change the basis on which a decision is given by the court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter se parties and effect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and function as an appellate Court or tribunal which is against the concept of separation of powers.

We have already noticed the nature of relief granted by this Court to the writ petitioners. The petitioners right to participate in the enquiry before the sale proceeds are distributed is not taken away by the impugned legislation. The impugned legislation in no manner overrules the judgment which attained finality in between the parties. The sweep of legislation is not confined to the petitioners alone but uniformly applies to all creditors concerning the entire subject sought to be covered under the impugned legislation. The petitioners right to realize the amounts from out of the sale proceeds is in no manner taken away by the impugned legislation. The judgment in no manner declared the rights of the petitioners for realization of their money out of the sale proceeds in preference to the claim of the secured creditors. The impugned legislation, as a measure of legislative policy lays down

priorities in distribution of the sale proceeds in which the expenses incurred for preservation and protection of the assets is placed on the top priority followed by dues payable to the secured creditors according to their rights and priorities inter se; dues payable to provident fund or other authorities which are protected under a statute by a charge on the assets. Even the share capital contributed by the Members of the Society is placed below the priorities referred to hereinabove. The object underlying the impugned provision is to provide rationale basis for distribution of the proceeds realized from the transfer of assets of the society concerned and its application in discharge of the liabilities. That by no stretch of imagination, the prioritization could be attacked as an irrational law. The impugned provision merely indicates the prioritization and in no manner deprives or puts an embargo on the rights of the petitioners to realize the amounts payable to them. It is nobody's case that the petitioners would not be paid their money from out of the proceeds realized from the sale of assets of the society even if the amounts are available for discharge of the liabilities of the society in order of priority.

The impugned provision, in our considered opinion, in no manner encroaches upon the judicial field. There is no attempt made to overrule the judgment of this Court. The impugned provision in no manner interferes with the order binding between the parties.

We are not inclined to examine the constitutional validity of Sections 3, 4 and 4(b) of the Andhra Pradesh Relief Undertakings (Special Provisions) Act, 1971 for the reason that no detailed submissions have been made except orally raising the question about the constitutional validity of the provisions. That apart, the issue about the constitutional validity of the provision has become academic since

Section 12-A of the Act as amended has come into force with effect from 02-08-2003. It is settled law that this Court does not express its opinion on issues which do not really require consideration.

For the aforesaid reasons, we find no substance in any of the contentions urged for and on behalf of the writ petitioners. The writ petition fails and shall accordingly stand dismissed without any order as to costs.

(B. Sudershan Reddy, J)

-02-2005

(C.V. Ramulu, J)

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That immediately upon the pronouncement of the Judgment, learned counsel for the petitioners made an oral application seeking certificate for appeal to the Supreme Court.

We find no merit in the oral application of the learned counsel for the petitioner since no substantial question of law of general importance is involved requiring the same to be decided by the Supreme Court. The application is accordingly dismissed.

(B. Sudershan Reddy, J)

24-02-2005

(C.V. Ramulu, J)

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Note: LR copy to be marked.
B/O
Gs/ks

To

1 Secretary, Revenue Department, the Government of Andhra Pradesh, Secretariat, Hyderabad.

2 The Chairman, Government of Andhra Pradesh,
Public Enterprises Dept., Implementation, Secretariat,
B-Block, 3rd Floor, A.P.Secretariat, Hyderabad.
3 The Managing Director, the Rajahmundry Co-op. Spinning
Mills Ltd., Rajahmundry, East Godavari District.
4 The Managing Director, the Chirala Co-op. Spinning Mills
Ltd., Chirala, Prakasam District.
5 The Managing Director, the Chilakaluripet Co-op. Spinning
Mills Ltd., Managing Director, Chilakaluripet, Guntur
District.
6 The Managing Director, the Nellore Co-op. Spinning Mills
Ltd., Nellore, Andhra Pradesh.
7 The Managing Director, the Parchuru Cotton Growers
Co-op. Spinning Mills Ltd., Inkollu, Prakasam District.
8 The Managing Director, the Adilabad Cotton Growers
Co-op. Spinning Mills Ltd., Adilabad, Andhra Pradesh.
9 The Managing Director, the Rajarajeswari Co-op. Spinning
Mills Ltd., Siriseralla, Karimnagar District.
10 Legal Consultant,
Implementation Secretariat, Public Enterprise Department,
3rd Floor, 310, B-Block, Secretariat Buildings, Hyderabad.
11 The Commercial Tax Officer, No- II Circle, Nellore,
Represented by P. Suresh Kumar,
Commercial Tax Officer-II - Nellore.
12 Assistant General Manager, State Bank of India,
Nellore Branch, Achari Street, Nellore – AP.
13 The Chief Manager, the Andhra Bank,
Rajahmundry Branch, Rajahmundry.
14 The Commercial Tax Officer, Purchur Circle,
Prakasam District.
15 IFCI Limited, Rep: Asst G.M (Law) V.Satya Venkata Rao, S/o
Sri V.V. Ramakrishna Rao, R/o Hyderabad.
Taramandal Complex, 8th Floor, 5-9-13 Saifabad,
Hyderabad 500 004.
35 Industrial Development Bank of India, Rep: Deputy
General Manager, A.V.Sunil S/o Shri K.Karunakaran, R/o
Hyd. IDBI Tower, 5-9-89/1&2 Chapel Road, Hyderabad.

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[1] 2003 (5) ALD 516 (DB)

[2] 2004 (3) ALD 474 (DB)

[3] AIR 1983 SC 937

[4] AIR 1956 SC 676

[5] (1996) 3 SCC 709

[6] (1995) 4 SCC 718

[7] 1996 (2) ALT 19 (DB)
s

[8] 1995 Supp (2) SCC 17

[9] 1969 (2) SCC 283

[10] AIR 1996 SC 188

[11] AIR 2005 SC 137